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7 Attorneys for Plaintiffs Virgil Graves, Jr.,  
8 Virgil Graves Sr., and Corey Graves

9 **UNITED STATES DISTRICT COURT**  
10 **EASTERN DISTRICT OF CALIFORNIA**

11  
12 VIRGIL GRAVES, Jr., VIRGIL  
13 GRAVES, SR., and COREY  
GRAVES,

14 Plaintiffs,

15 v.

16 CITY OF STOCKTON, et al.,

17 Defendants.  
18

Case No. CIV S-04-0430 DFL KJM

STIPULATION NARROWING  
CLAIMS TO BE ADJUDICATED ON  
DEFENDANTS' RULE 56 MOTION  
FOR SUMMARY JUDGMENT OR  
SUMMARY ADJUDICATION; ORDER

Date: February 1, 2006  
Time: 10:00 a.m.  
Place: Courtroom 7

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21  
22 **STIPULATION**

23  
24 1. Plaintiffs filed a first amended complaint naming various defendants and  
25 alleging various claims. Defendants filed a motion pursuant to Rule 56 for summary  
26 judgment or, alternatively, summary adjudication. Counsel for the parties have met and  
27 conferred. As a result of that meeting and conference, the parties hereby stipulate and  
28 agree to narrow the issues as stated herein.

1           2.     In a separate stipulation filed pursuant to Rule 41, the parties stipulated  
2 to dismissing with prejudice the following defendants: Stockton Police Department,  
3 Mark W. Herder, Brian Fry, Robert Wong, Tammie Murrell, Scott Graviette, Anthony  
4 Restuccia, and James Ridenour. Accordingly, the potential liability of those defendants  
5 is no longer at issue in this case.

6           3.     The parties stipulate to dismiss all claims asserted on behalf of plaintiff  
7 Bebberry Ward, who is deceased.

8           4.     The parties stipulate to dismiss the Fifth Claim for Relief in its entirety.

9           5.     The parties stipulate to dismiss the following:

10           (a)    From the First Claim for Relief (42 U.S.C. § 1983): the claims of  
11 all plaintiffs other than Virgil Graves, Jr., and all alleged constitutional  
12 deprivations other than that of Graves, Jr., for excessive force.

13           (b)    From the Second Claim for Relief (Assault and Battery): the  
14 claims of all plaintiffs other than Virgil Graves, Jr.

15           (c)    From the Third Claim for Relief (Intentional Infliction of Emotional  
16 Distress): The claims of plaintiff Virgil Graves, Jr.

17           6.     The parties submit that the following claims remain to be adjudicated on  
18 defendants' pending Rule 56 motion:

19           (a)    On the First Claim for Relief On the First Claim for Relief (42  
20 U.S.C. § 1983): (1) Whether defendants Jenneiahn, Johnson or City of Stockton  
21 caused plaintiff Virgil Graves, Jr., to be subjected to excessive force on March  
22 22, 2002, (2) Whether defendants Villanueva, Thrush, Kamigaki, or City of  
23 Stockton caused plaintiff Virgil Graves, Jr., to be subjected to excessive force  
24 on April 10, 2002, and (3) whether any of the individual defendants are entitled  
25 to qualified immunity.  
26  
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28

1 (b) On the Second Claim for Relief: (1) Whether defendants Jenneiahn,  
2 Johnson or City of Stockton battered plaintiff Virgil Graves, Jr., on March 22,  
3 2002, (2) Whether defendants Villanueva, Thrush, Kamigaki or City of  
4 Stockton battered plaintiff Virgil Graves, Jr., on April 10, 2002, and (3) whether  
5 any of the defendants are entitled to statutory immunity under California state  
6 law.

7 (c) On the Third Claim for Relief: (1) Whether defendants Villanueva,  
8 Thrush, Kamigaki, or City of Stockton intentionally inflicted emotional distress  
9 on plaintiff Virgil Graves, Sr., or Corey Graves on April 10, 2002, and (2)  
10 whether any of the defendants are entitled to statutory immunity under California  
11 state law.

12 (d) On the Fourth Claim for Relief: (1) Whether any defendant  
13 negligently injured any plaintiff, and (2) whether any defendant is entitled to  
14 statutory immunity under California state law.

15 THE LAW OFFICES OF JOHN BURTON

16  
17 By /S/  
18 John Burton  
Attorneys for Plaintiff

DATED: January 13, 2006

19 RICHARD E. NOSKY, JR.  
20 CITY ATTORNEY

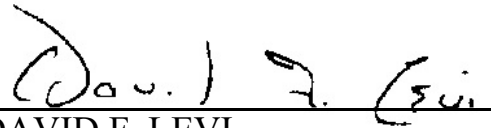
21 By /S/  
22 Shelley L. Green  
23 Attorneys for Defendants

DATED: January \_\_, 2006

**ORDER**

IT IS SO ORDERED.

DATED: 1/20/2006

  
\_\_\_\_\_  
DAVID F. LEVI  
United States District Judge